



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert R. Corbin

April 24, 1987

Mr. Theodore L. Humes, Director
Residential Utility Consumer Office
34 West Monroe, Suite 1016
Phoenix, Arizona 85003

Re: I87-053 (R87-069)

Dear Mr. Humes:

You have requested an opinion on two questions relating to the powers and duties of the director of the Residential Utility Consumer Office ("RUCO"). First, you ask whether A.R.S. § 40-464(A)(2) permits a non-lawyer director to practice law in rate proceedings before the Corporation Commission. Second, you ask whether RUCO is restricted to involvement in rate making and rate design proceedings or whether it may participate in other matters involving public service corporations.

We conclude a non-lawyer director of RUCO may not personally conduct proceedings contemplated by A.R.S. § 40-464(A)(2), but must be represented by an active member of the State Bar of Arizona. Additionally, RUCO's participation in proceedings is limited to those related to rate making or rate design.

A.R.S. § 40-464(A)(2) provides:

The director may:

.....

2. Prepare and present briefs, arguments, proposed rates or orders and intervene or appear on behalf of residential utility consumers before hearing officers and the corporation commission as a party in interest and also participate as a party in

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interest pursuant to § 40-254 in proceedings relating to rate making or rate design and involving public service corporations.

Representation of others in proceedings before administrative agencies such as the Arizona Corporation Commission ("Commission") constitutes the practice of law in Arizona. Hunt v. Maricopa County Employees Merit System Commission, 127 Ariz. 259, 619 P.2d 1036 (1980); Ariz. Atty. Gen. Op. 71-11. When a state officer, such as the director of RUCO, is acting in his official capacity and, in doing so is representing either the state or its citizens, he is subject to the same rules that prohibit the practice of law by anyone other than an active member of the State Bar of Arizona. State ex rel. Frohmiller v. Hendrix, 59 Ariz. 184, 124 P.2d 768 (1942).^{1/}

In Rule 31(a)(3) and (4), the Supreme Court of Arizona has set forth who may practice law in this jurisdiction:

3. Privilege to practice. Except as hereinafter provided in subsection 4 of this section (a), no person shall practice law in this state or hold himself out as one who may practice law in this state unless he is an active member of the state bar, and no member shall practice law in this state or hold himself out as one who may practice law in this state, while suspended, disbarred, or on disability inactive status.

4. Exceptions. Notwithstanding the provisions of subsection 3 of this section (a):

A. In any proceeding before an Appeal Tribunal or the Appeals Board of the Department of Economic Security or any

^{1/}The Hendrix court recognized that a state official may represent himself in his private capacity, just as anyone else may; the prohibition is against a non-lawyer state official's exercising the functions of a lawyer in his official capacity.

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successor agency: an individual party (either claimant or employer) may represent himself or be represented by a duly authorized agent who is not charging a fee for the representation; an employer, including a corporate employer, may represent itself through an officer or employee; or a duly authorized agent who is charging a fee may represent any party, providing that an attorney authorized to practice law in the State of Arizona shall be responsible for and supervise such agent.

B. An employee may represent himself or designate a representative, not necessarily an attorney, before any board hearing or any quasi-judicial hearing dealing with personnel matters, providing that no fee may be charged for any services rendered in connection with such hearing by any such designated representative not an attorney admitted to practice.

C. An officer of a corporation who is not an active member of the state bar may represent the corporation before a justice court or police court, provided that: the corporation has specifically authorized such officer to represent it before such courts; such representation is not the officer's primary duty to the corporation, but secondary or incidental to other duties relating to the management or operation of the corporation; and the corporation was an original party to or a first assignee of a conditional sales contract, conveyance, transaction or occurrence which gave rise to the cause of action in such court, and the assignment was not made for a collection purpose.

None of the exceptions applies to the director of RUCO.

The Legislature may not authorize one to practice law who is not permitted to do so by the Supreme Court of Arizona. See Anamax Mining Co. v. Arizona Department of Economic Security, 147 Ariz. 482, 711 P.2d 621 (App. 1985).

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The practice of law is a matter exclusively within the authority of the judiciary. The determination of who shall practice law in Arizona and under what condition is a function placed by the state constitution in this court.

Hunt, 127 Ariz. at 261-262, 619 P.2d at 1038-1039 (citation omitted). See also Matter of Anonymous Member of State Bar, 128 Ariz. 238, 624 P.2d 1286 (1981).

The director of RUCO is empowered to "[e]mploy such attorneys as are required to represent the interests of residential utility consumers." A.R.S. § 40-464(A)(5). The Legislature did not require that the director of RUCO be a licensed attorney; however, it provided that a non-lawyer director could hire licensed attorneys for representation of consumer interests. The Legislature enacted a structure which is consistent with the Supreme Court's opinions in Hunt and in Anonymous Member of the State Bar. The rather detailed list of functions which the director is authorized to perform under A.R.S. § 40-464(A)(2) is a list of activities which constitute the practice of law and may be engaged in by the director only through licensed attorneys. The statute may not constitutionally be construed as authorizing functions in which a non-lawyer director may engage personally.^{2/}

In answer to your second question, it is our opinion that the director of RUCO may intervene or otherwise appear only in Commission proceedings relating to rate making or rate design. The director, through RUCO's attorneys, may:

participate as a party in interest pursuant to § 40-254 in proceedings relating to rate making or rate design and involving public service corporations.

A.R.S. § 40-464(A)(2) (emphasis added).

^{2/}Ariz. Const., art. III; Anamax Mining Co. v. Arizona Department of Economic Security, 147 Ariz. 482, 485, 711 P.2d 621, 624 (App. 1985).

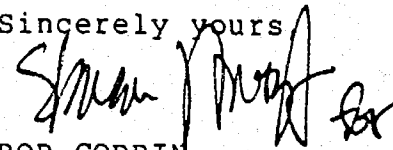
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The statute specifically authorizes participation before the Commission, hearing officers and in-court actions initiated pursuant to A.R.S. § 40-254. RUCO is authorized to participate in proceedings "relating to rate making or rate design and involving public service corporations." In statutory construction the word "and" is a conjunction which must not be read interchangeably with the disjunctive word "or" unless it is necessary to effectuate the obvious intent of the legislature, to save the statute from unconstitutionality or to avoid rendering a clause meaningless. See e.g. Smith v. City of Casper, 419 P.2d 704 (Wyo. 1966); In re Rapid Film Service, Inc., 146 N.W.2d 563, 181 Neb. 1 (1966). The word "and" as used in A.R.S. § 40-464(A)(2) is clearly conjunctive. RUCO is authorized only to participate in proceedings which both relate to rate making or design and also involve public service corporations.

The phrase "relating to" embraces more than "directly connected to" or "part of." See e.g. Hardesty v. Andro Corp., 555 P.2d 1030 (Okla. 1976); State v. Gaddy, 189 N.E.2d 689 (Ohio 1962). Therefore, RUCO may participate in proceedings which have a reasonable relationship to rate making or rate design. If RUCO can establish that a matter has or is likely to have a significant effect on rate making or rate design, we believe that participation in such a matter is within the authority of RUCO pursuant to A.R.S. § 40-464(A)(2).

Therefore, the director is authorized, through counsel, to participate in proceedings which involve public service corporations and relate to rate making or design. However, a non-lawyer director may not personally conduct such proceedings because of the Supreme Court's prohibition against the unauthorized practice of law.

Sincerely yours


BOB CORBIN
Attorney General

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